

(2012) 11 KAR CK 0097
In the Karnataka High Court
Case No : Criminal Appeal No. 267 of 2012

State of Karnataka

APPELLANT

Vs

Sri Upendra P Nayak and M. Ananda Naika

RESPONDENT

Date of Decision : 15-11-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156 (3)
Penal Code, 1860 (IPC) — Section 427

Citation : (2012) 11 KAR CK 0097

Hon'ble Judges : A.S. Pachhapure, J

Bench : Single Bench

Advocate : Bhavani Singh, SPP, for the Appellant;

Judgement

A.S. Pachhapure

1. The State has challenged the judgment and order of acquittal of the respondents for the charge u/s 427 IPC on a trial by the JMFC, Mangalore. The facts relevant for the purpose of this appeal are as under:

PW1 Smt. D'souza is the owner of the site measuring 10 cents in sy. No. 15/2 of Nejiguri of Padavu village. She had put up a compound wall on the said site. The first respondent is said to be the owner of the land adjoining the site. In the last week of March 2008 the first respondent is said to have dug his land to level it and at that time caused damage to the compound wall, thereby the compound wall collapsed and the complainant is said to have sustained loss to an extent of Rs. 1,60,000/-. As the police did not register a complaint against the respondents, the complainant approached the learned Magistrate and filed a private complaint and the matter was referred for investigation u/s 156(3). During investigation the mahazars were held. The documents were collected. The statement of the witnesses were recorded and charge sheet came to be filed against the respondents for the offence punishable u/s 427 IPC.

2. As the respondents did not plead guilty, statements of PW1 and 8 were

recorded and got marked the documents Exs.P1 to P14. The respondents got marked Exs. D1 to D4. The Trial Court after hearing, has acquitted the respondents for the said charge. The judgment and order of acquittal has been challenged in this appeal.

3. Heard the learned State Public Prosecutor.

4. It is the contention of the learned State Public Prosecutor that PWs.1 and 2 are the witnesses who have spoken with regard to the damage caused by the respondents and as the compound wall collapsed the Trial Court ought to have convicted the respondents for the said charge.

5. As alleged by the prosecution, the leveling of the land was done in the last week of March 2008 and though a complaint was filed by PW1 to the police, they did not investigate into the matter as they were of the opinion that it is a civil dispute between the parties. It is in the month of October 2009 that a complaint came to be filed before the Magistrate and it was referred for investigation. There is inordinate delay of more than a year in filing complaint before the Court. Even as regards the complaint to the police, that was after the lapse of about three months. At the initial stage the police were of the opinion that it is a civil dispute between the parties. There appears to be inordinate delay which has not been properly explained by the complainant in lodging a complaint to the police to initiate action against the respondents.

6. The respondent No. 1 sold the property to the respondent No. 2 under a sale deed in the month of April 2008. Thereby it is said that the first respondent was not the owner of the adjoining land. Even otherwise, as could be seen from the alleged action of the respondents, the intention was to level the land and it cannot be said that by stretch of imagination that there was any intention on their part to damage the compound wall of the complainant. Except the interested version of PWs.1 and 2, there is no other material on record. The intention on the part of the respondents has not been proved from the evidence of these two witnesses. It is under these circumstances, the Trial Court was not convinced from the evidence on record that there was any intention on the part of the respondents to cause damage to the compound wall, thereby it has granted an order of acquittal. This is an appeal against acquittal and the Appellate Courts will be slow in interfering with such orders. Even if there is a second view, the one accepted by the Trial Court cannot be disturbed. In that view of the matter, I do not find any justifiable grounds to admit this appeal.

In the result, the appeal fails and is dismissed.

As the appeal is heard on merits, the interim application for condonation of delay is not considered and it is disposed of accordingly.